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PATENT
Customer No. 22,852
Attorney Docket No. 04284.0845-05

#13

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Customer No. 22,852
Attorney Docket No. 04284.0845-05

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Reissue of:	
U.S. Patent No. 6,145,023	Group Art Unit: 2182
Serial No. 09/826,896	Examiner: R. Perveen
Filed: April 6, 2001	
For: INFORMATION STORAGE AND INFORMATION PROCESSING SYSTEM UTILIZING STATE-DESIGNATING MEMBER PROVIDED ON SUPPORTING CARD SURFACE WHICH PRODUCES WRITE-PERMITTING OR WRITE-INHIBITING STATE	

7/23/03

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 1.192)

Transmitted herewith in triplicate is the APPEAL BRIEF in this application with respect to the Notice of Appeal filed on December 18, 2002.

This application is on behalf of

☐ Small Entity X Large Entity

Pursuant to 37 C.F.R. 1.17(f), the fee for filing the Appeal Brief is:

☐ $160.00 (Small Entity)

X $320.00 (Large Entity)

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TOTAL FEE DUE: $320.00

Notice of Appeal Fee	$ 320.00
Extension Fee	$1,970.00
Total Fee Due	$2,290.00

X Enclosed are two checks totaling $2,290.00 to cover the above fees.

PETITION FOR EXTENSION. If any extension of time is necessary for the filing of this Appeal Brief, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to our Deposit Account No. 06-0916. A duplicate copy of this paper is enclosed for use in charging the deposit account.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 17, 2003

By: _____
Doris Johnson Hines
Reg. No. 34,629

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Reissue of:	
U.S. Patent No. 6,145,023	
Serial No. 09/826,896	Group Art Unit: 2182
Filed: April 6, 2001	Examiner: R. Perveen
Inventor: Hiroshi IWASAKI	
Assignee: Kabushiki Kaisha Toshiba	
For: INFORMATION STORAGE AND INFORMATION PROCESSING SYSTEM UTILIZING STATE-DESIGNATING MEMBER PROVIDED ON SUPPORTING CARD SURFACE WHICH PRODUCES WRITE-PERMITTING OR WRITE-INHIBITING STATE	

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

APPEAL BRIEF UNDER 37 C.F.R. § 1.192

In accordance with 37 C.F.R. § 1.192, Appellant submits with this appeal brief the appropriate fee of $2,290.00. A Notice of Appeal was filed on December 18, 2002. Because this brief is filed within seven months of the filing of the Notice of Appeal, this appeal brief is timely.

(1) Real Party in Interest

The real party in interest in this reissue is the record patent owner Kabushiki Kaisha Toshiba. The assignment was recorded on January 26, 1996, at Reel 7857, Frame 0108.

(2) Related Appeals and Interferences

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To the best of Appellant's knowledge, no related appeals or interferences exist.

(3) Status of Claims

Claims 1-36 are pending in this reissue of U.S. Patent No. 6,145,023. Claims 1-36 stand rejected under 35 U.S.C. § 112, first paragraph

(4) Status of Amendments

Patent Owner submitted on December 18, 2002, an amendment to claim 18 subsequent to the date of the June 18, 2002, Final Office Action. That claim amendment was made to correct a typographical error that the Examiner had noted in the June 18, 2002, Final Office Action. The Examiner refused entry of the amendment to correct the typographical error, (a comma was not properly underlined), stating that the amendment was "not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

(5) Summary of Invention

The present invention relates generally to an information storage apparatus for sharing data among electronic devices, such as information processing devices, and an information processing apparatus using the information storage apparatus, and more particularly to a write prohibit mechanism for protecting internal data in an external storage apparatus.

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An embodiment of the invention is shown below in Fig. 1A.

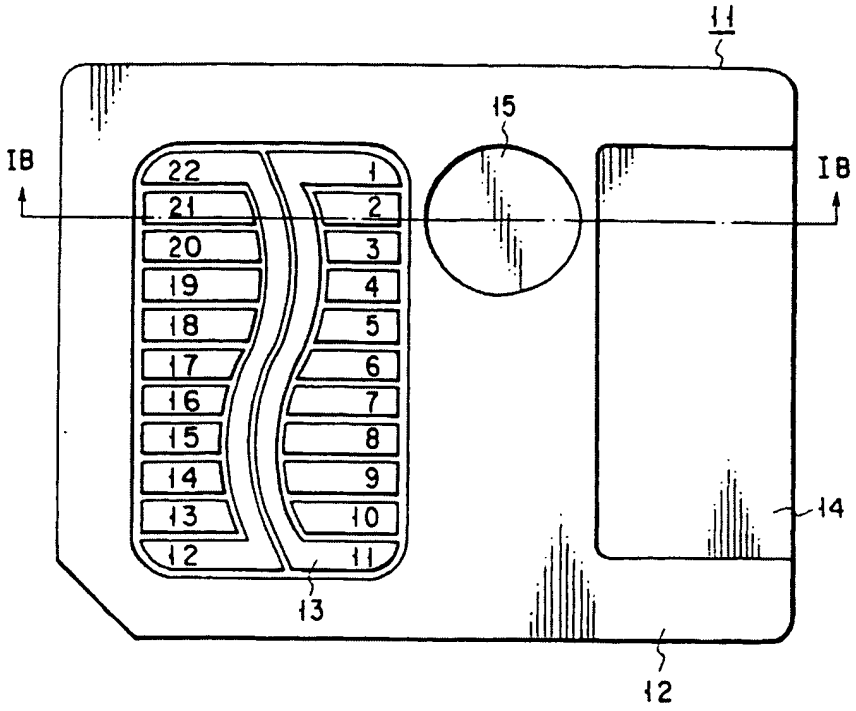

FIG. 1A

Memory module 11 is used as an external storage apparatus, such as or similar to a floppy disk. A semiconductor memory package 13 is mounted in a support member 12. The support member has a label attachment section 14 on which an indication label identifying the information stored in memory 13 can be placed. See, col. 4, lines 39-56.

Support member 12 also includes a seal attachment section 15 on which a seal can be placed indicating the write status of the semiconductor memory 13. "The seal attachment section 15 indicates an attachment position of a conductive seal and prevents the conductive seal from projecting upwards from the upper surface of the support member 12." (Col. 5, lines 17-22 and Figs. 1A and 1B.) The specification further explains that "[t]he conductive seal functions as write protector for constituting a write prohibit mechanism. The conductive seal is formed

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inexpensively, for example, by coating an adhesive on one surface of paper sheet and coating a conductive material such as aluminum on the other surface thereof." Col. 5, lines 26-31. The "conductive seal is attached on the seal attachment section 15 on the support member 12, thereby visually indicating that data write in the semiconductor memory package 13 is prohibited." (Col. 5, lines 34-37.)

Fig. 4 shows conductive seal 16. The "memory module 11 is set in a write prohibit state by attaching the conductive seal 16 to the seal attachment section 15 on the support member 12. If the conductive seal is attached, the user cam visually recognize the write prohibit state of the memory module 11. In addition, if the memory module 11 is mounted in the card-shaped holder 21, electrical conduction is effected between the connector pins 25 and the memory controller can also recognize the write prohibit state of the module 11." Col. 6, lines 57-65. The connector pins 25, shown in Fig. 4 as contacting the conductive seal 16, "are arranged at a distance of 1mm or more" and are "connected to a discriminating circuit" that "discriminates the data write permit state and the data write prohibit state on the basis of the conductive state and non-conductive state between the connector pins 25." Col. 6, lines 30-41.

(6) Issues

Whether claims 1-36 of this reissue application meet the requirements of 35 U.S.C.§ 112, first paragraph.

(7) Grouping of Claims

For purposes of this appeal, claims 1-36 stand or fall together.

(8) Argument

Appellant filed this reissue application to correct potential misinterpretations of the claimed subject matter. As explained by the inventor in his reissue declaration, independent

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claim 1 as issued in U.S. Patent No. 6,145,023 recited that "a write-permitting or write-prohibiting signal is produced by said state-designating conductive member." Reissue Declaration at ¶ 6. As further explained in the reissue declaration, "the state-designating member of the invention does not "produce" any signal. Instead, it indicates a state of the claimed storage medium means." Reissue Declaration at ¶ 6.

Appellant's specification discloses that the state designating member, shown in the drawings as element 16, can be, for example, a conductive or non-conductive seal or a conductive or non-conductive coating. See, for example, col. 8, lines 8-11. By virtue of element 16, the write-permitting or write-prohibiting state of the memory, identified as element 11, can be visually and/or electrically identified. See, for example, col. 6, line 57 through col. 7, line 33. Appellant amended the independent claims of this reissue application to insure that the claims would be correctly interpreted and given their appropriate scope in light of the specification from which the claims depend for support.

After withdrawing a rejection under 35 U.S.C. § 251, the Examiner contends that independent claims 1, 8, 18, and 28 fail to meet the requirements of 35 U.S.C. § 112, first paragraph.

a. The Board Should Reverse the Enablement Rejection Because the Specification Demonstrates How to Make and Use the State-Designating Member

The Examiner states that, "Claims 1, 8, 18, and 28 are rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for the write-permitting or write-inhibiting signal identifying a state of the storage medium means,[1] does not reasonably provide

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1. The language that the Examiner concedes is enabling is similar to the claim language of the originally filed reissue claims. Those claims, however, were erroneously rejected under 35

enablement for the write-permitting or write inhibiting signal being produced by virtue of a presence of the state-designating member." The Examiner concludes that "[t]he specification does not enable any person skilled in the art with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims."

In making this rejection, the Examiner does not make a single citation to Appellant's specification and does not provide any explanation for her view that the specification is non-enabling. Though required to do so based on § 2164.04 at 2100-178 of the MPEP, the Examiner has not provided "a reasonable basis to question the enablement provided for the claimed invention." In addition, the specification provides more than enough information to meet the requirements of 35 U.S.C. § 112, first paragraph.

According to the Court of Appeals for the Federal Circuit, "[t]o be enabling, the specification of the patent must teach those skilled in the art how to make and use the full scope of the claimed invention without 'undue experimentation.'" *Plant Genetic Sys. v. Dekalb Genetics Corp.*, 315 F.3d 1335 65 USPQ2d 1452 (Fed. Cir. 2003). A lack of enablement rejection "is appropriate where the written description fails to teach those in the art to make and use the invention as broadly as it is claimed without undue experimentation. *In re Cortright*, 165 F.3d 1353, 49 USPQ2d 1464 (Fed. Cir. 1999). Indeed, "it is incumbent upon the Patent Office, whenever a rejection on this basis is made is to explain *why* it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable

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U.S.C. § 251 based on the Examiner's erroneous conclusion that the independent reissue claims must contain the word "producing." See page 3, paragraph 6 of the June 18, 2002, Office Action, stating that "applicant amended to restore 'producing' thus overcoming the original recapture rejection." Appellant notes that although the independent claims were amended to include the word "producing," this amendment was in no way made because Appellant agrees with the Examiner's conclusion that this word must appear in the claims.

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evidence or reasoning which is inconsistent with the contested statement." (*Id.*) The Examiner has provided no explanation of *why* the specification is non-enabling for the pending claims. This failure alone justifies reversal.

Appellant's specification contains the needed information. It explains that support member 12 includes a seal attachment section 15. "The seal attachment section 15 indicates an attachment position of a conductive seal and prevents the conductive seal from projecting upwards from the upper surface of the support member 12." Col. 5, lines 17-22 and Figs. 1A and 1B. The specification further explains that "[t]he conductive seal functions as write protector for constituting a write prohibit mechanism. The conductive seal is formed inexpensively, for example, by coating an adhesive on one surface of paper sheet and coating a conductive material such as aluminum on the other surface thereof." (Col. 5, lines 26-31.) The "conductive seal is attached on the seal attachment section 15 on the support member 12, thereby visually indicating that data write in the semiconductor memory package 13 is prohibited." Col. 5, lines 34-37.

In addition, Fig. 4 shows conductive seal 16. The specification explains the "memory module 11 is set in a write prohibit state by attaching the conductive seal 16 to the seal attachment section 15 on the support member 12. If the conductive seal is attached, the user can visually recognize the write prohibit state of the memory module 11. In addition, if the memory module 11 is mounted in the card-shaped holder 21, electrical conduction is effected between the connector pins 25 and the memory controller can also recognize the write prohibit state of the module 11." Col. 6, lines 57-65. The specification further explains that the connector pins 25, shown in Fig. 4 as contacting the conductive seal 16, "are arranged at a distance of 1mm or more" and are "connected to a discriminating circuit" that "discriminates the data write permit

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state and the data write prohibit state on the basis of the conductive state and non-conductive state between the connector pins 25." Col. 6, lines 30-41.

Based on the description in the specification and the accompanying figures, it is quite apparent that if the conductive seal 16 is present, there will be a conductive state between the connector pins 25, and if there is no conductive seal present, there will be no conductive state between the pins 25. As described in the specification, the placement of the conductive seal 16 in the seal attachment section 15 can identify the write prohibit state. That state is determined by the discriminating circuit, which discriminates the write permit or write prohibit state based in the conductive state between the pins 25. That state is determined by the presence or absence of the conductive seal 16.

The independent claims recite that "a write-permitting or a write-inhibiting signal is produced by virtue of a presence of said state-designating conductive member." Based on at least the above-quoted portions of the specification and the accompanying drawings, that is exactly what the specification describes and enables. This information, in addition to the Examiner's failure to explain *why* the claims are not enabled, should compel the Board to reverse the rejection.

b. The Board Should Reverse the Written Description Rejection Because the Specification Defines the Claimed Invention

According to the Court of Appeals for the Federal Circuit, an applicant complies with the written description requirement "by describing the invention with all its claimed limitations." *Gentry Gallery v. Berkline Corp.*, 134 F.3d 1473, 1479, 45 USPQ2d 1498, 1503 (Fed. Cir. 1998). "One does that by such descriptive means as words, structures, figures, diagrams,

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formulas, etc., that fully set forth the claimed invention." *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

With respect to rejections based on lack of written description, the MPEP explains that "the examiner must set forth express findings which support the lack of written description conclusion." (MPEP § 2163.04 at 2100-169.) In particular, the Examiner must provide "reasons why a person skilled in the art would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed." (*Id.*) The Examiner's written description rejection is neither in accordance with the law of the Federal Circuit nor complies with the requirements of the MPEP.

The independent claims recite that "a write-permitting or a write-inhibiting signal is produced by virtue of a presence of said state-designating conductive member, and wherein the produced write-permitting or write-inhibiting signal identifies a state of the storage medium means. In support of this rejection, the Examiner recognized that the claims as issued, reciting the write-permitting or write-prohibiting signal is produced by the state-designating member," could be interpreted in a manner inconsistent with the specification. The Examiner concluded, without explanation, that the amended language in the independent claims, that the signal is produced by ***virtue of the presence*** of the state-designating member," is "also subject to the same confusion."

The claims as amended, however, recite that the presence of conductive seal 16 is what causes visual and/or electrical determination of the write-permitting or write-prohibiting state of the memory. That is precisely what the specification describes. There is no basis for alleging "confusion." The Examiner's written description rejection should therefore be reversed.

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c. The Advisory Action Fails to Address Any of Appellant's Arguments

In the January 14, 2003, Advisory Action, the Examiner states that the arguments presented in Appellant's December 18, 2002, Amendment do not "place the application in condition for allowance because: the arguments presented are not persuasive to effect a change in examiner's position and these issued [sic] have already been addressed in previous office actions; thus, the examiner maintains her position as cumulatively described in the previous office actions." The Examiner's position has no basis because the previous Office Action (dated June 18, 2002) is the only Office Action in which the Examiner applied a rejection under 35 U.S.C. § 112, first paragraph. The Examiner had earlier rejected the claims under 35 U.S.C. 251, but that rejection was overcome. Thus, the December 18 Amendment was the first time that the § 112 rejection was addressed, the Examiner's belief that the issues addressed in the December 18 Amendment had been addressed before cannot be accurate.

Moreover, the Examiner has never explained why the portions of the specification and drawings Appellant specifically pointed out do not provide support for the invention as claimed. Instead, the Examiner has indicated that the claimed subject matter is allowable and has suggested that the claims be pursued in the pending continuation application. This is not a reason to maintain the § 112 rejection.

For all of the reasons advanced above, the Board is requested to reverse the rejections of claims 1-36 under 35 U.S.C. § 112, first paragraph.

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(9) Appendix

An attached appendix contains a copy of claims 1-36 involved in this appeal. Pursuant to § 2274 of the MPEP, the claims include all underlining and bracketing necessary to reflect the changes made to the original claims throughout prosecution of the reissue.

Please grant any extensions of time required to enter this Appeal Brief and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 17, 2003

By: _____
Doris Johnson Hines
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APPENDIX TO APPEAL BRIEF

1. An information storage card apparatus comprising:

a supporting card;

storage medium means on said supporting card in which information can be written; and

a state-designating conductive member provided on a surface of the supporting card designating a state of said storage medium means in which writing information to the storage medium means is permitted or prohibited, wherein a write-permitting or a write-inhibiting signal is produced by virtue of a presence of said state-designating conductive member, and wherein the produced write-permitting or write-inhibiting signal identifies a state of the storage medium means.

2. The apparatus of claim 1, wherein said supporting storage medium means comprises a storage medium device including at least one nonvolatile semiconductor memory device.

3. The apparatus of claim 1, wherein said supporting card has a recess in which said state-designating conductive member is provided.

4. The apparatus of claim 1, wherein said supporting card is nonconductive and said state-designating conductive member is conductive to designate that said writing information is prohibited.

5. The apparatus of claim 1, wherein said state-designating conductive member is a seal.

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6. The apparatus of claim 3, wherein said state-designating conductive member is a seal.

7. The apparatus of claim 4, wherein said conductive member is a seal.

8. An information storage apparatus comprising:

a storage medium in which information can be written; and

a support member incorporating said storage medium, the support member having a first portion on a main surface thereof where an external connection terminal electrically connected to said storage medium is provided, and a second portion on said main surface, where a state-designating member for designating a state in which writing of information to the storage medium is prohibited is provided, and wherein [a write-permitting or] a write-inhibiting signal is produced by virtue of a presence of said state-designating member, and wherein the produced write-inhibiting signal identifies a state of the storage medium.

9. The information storage apparatus according to claim 8, wherein said state-designating member is composed of a conductive material.

10. The information storage apparatus according to claim 8, wherein said state-designating member is composed of a non-conductive material.

11. The information storage apparatus according to claim 8, wherein a height of the first portion on the main surface of said support member where said external connection terminal is provided is equal to a height of the second portion on the main surface of said support member,

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where said state-designating member is provided.

12. The information storage apparatus according to claim 8, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion where said state-designating member for designating a state in which writing of information is prohibited is provided is formed in a second recess on the main surface of said support member.

13. The information storage apparatus according to claim 12, wherein the depths of said first and second recesses are greater than the height of said external connection terminal and the height of said state-designating member.

14. The information storage apparatus according to claim 13, wherein said first recess is separated from said second recess.

15. The information storage apparatus according to claim 11, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion where said state-designating member for designating a state in which writing of information is prohibited is provided is formed in a second recess on the main surface of said support member.

16. The information storage apparatus according to claim 15, wherein the depths of said first and second recesses are deeper than the height of said external connection terminal and the

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height of said state-designating member.

17. The information storage apparatus according to claim 16, wherein said first recess is separated from said second recess.

18. An information storage apparatus comprising:

a storage medium in which information can be written; and

a support member incorporating said storage medium, the support member having a first portion on a main surface thereof where an external connection terminal electrically connected to said storage medium is provided, and a second portion on said main surface, adapted for providing thereon a state-designating member for designating a state in which writing of information to the storage medium is prohibited, wherein, [a write-permitting or] a write-inhibiting signal is produced by virtue of a presence of said state-designating member, and wherein the produced write-inhibiting signal identifies a state of the storage medium.

19. The information storage apparatus according to claim 18, wherein said state-designating member is composed of a conductive material.

20. The information storage apparatus according to claim 18, wherein said state-designating member is composed of a non-conductive material.

21. The information storage apparatus according to claim 18, wherein a height of the first portion on the main surface of said support member where said external connection terminal is

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provided is equal to a height of the second portion on the main surface of said support member, adapted for providing thereon said state-designating member.

22. The information storage apparatus according to claim 18, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion adapted to be provided with said state-designating member for designating a state in which writing of information is prohibited is formed in a second recess on the main surface of said support member.

23. The information storage apparatus according to claim 22, wherein the depths of said first and second recesses are greater than the height of said external connection terminal and the height of said state-designating member.

24. The information storage apparatus according to claim 23, wherein said first recess is separated from said second recess.

25. The information storage apparatus according to claim 21, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion adapted for providing thereon said state-designating member for designating a state in which writing of information is prohibited is formed in a second recess on the main surface of said support member.

26. The information storage apparatus according to claim 25, wherein the depths of said first

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and second recesses are deeper than the height of said external connection terminal and the height of said state-designating member.

27. The information storage apparatus according to claim 26, wherein said first recess is separated from said second recess.

28. The information storage apparatus comprising:

a storage medium in which information can be written;

a supporting member incorporating said storage medium, the support member having a first portion on a main surface thereof where an external connection terminal electrically connected to said storage medium is provided, and a second portion on said main surface; and

a state-designating member on said second portion, for designating a state in which writing of information to the storage medium is prohibited, wherein [a write-permitting or] a write-inhibiting signal is produced by virtue of a presence of said state-designating member, and wherein the produced write-inhibiting signal identifies a state of the storage medium.

29. The information storage apparatus according to claim 28, wherein said state-designating member is composed of a conductive material.

30. The information storage apparatus according to claim 28, wherein a height of the first portion on the main surface of said support member where said external connection terminal is provided is equal to a height of the second portion on the main surface of said support member, where said state-designating member is provided.

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31. The information storage apparatus according to claim 28, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion where said state-designating member for designating a state in which writing of information is prohibited is provided is formed in a second recess on the main surface of said support member.

32. The information storage apparatus according to claim 31, wherein the depths of said first and second recesses are greater than the height of said external connection terminal and the height of said state-designating member.

33. The information storage apparatus according to claim 32, wherein said first recess is separated from said second recess.

34. The information storage apparatus according to claim 30, wherein said first portion where said external connection terminal is provided is formed in a first recess on the main surface of said support member and said second portion where said state-designating member for designating a state in which writing of information is prohibited is provided is formed in a second recess on the main surface of said support member.

35. The information storage apparatus according to claim 34, wherein the depths of said first and second recesses are greater than the height of said external connection terminal and the height of said state-designating member.

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36. The information storage apparatus according to claim 35, wherein said first recess is separated from said second recess.

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